

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN RANAE GLEEN CANDLER,
Plaintiff,
v.
JOHN & JANE DOES, et al.,
Defendants.

No. 1:23-cv-00459-JLT-SAB (PC)
ORDER DENYING PLAINTIFF'S THIRD
MOTION FOR APPOINTMENT OF
COUNSEL AND SECOND MOTION TO
COMPEL
(ECF Nos. 30, 31)

Plaintiff is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's third motion for appointment of counsel and second motion to compel his medical records, filed September 7, 2023.

I.

DISCUSSION

A. Motion for Appointment of Counsel

As Plaintiff is aware, he does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to

1 section 1915(e)(1). Rand, 113 F.3d at 1525.

2 Without a reasonable method of securing and compensating counsel, the court will seek
3 volunteer counsel only in the most serious and exceptional cases. In determining whether
4 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
5 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
6 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

7 In the present case, the Court does not find the required exceptional circumstances. Even
8 if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations
9 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
10 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to
11 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the
12 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most
13 actions require development of further facts during litigation and a pro se litigant will seldom be
14 in a position to investigate easily the facts necessary to support the case.”) The test is whether
15 exception circumstances exist and here, they do not. Indeed, the Court issued Findings and
16 Recommendations finding that Plaintiff stated a cognizable excessive force claim against an
17 unidentified correctional officer at Wasco State Prison and provides no basis whatsoever as to
18 why counsel is necessary. (ECF No. 12.) Accordingly, Plaintiff’s third motion for the
19 appointment of counsel is denied, without prejudice.

20 **B. Motion to Compel**

21 Plaintiff seeks an order compelling the Visalia County Jail and Kaweah Delta Medical
22 Center to “compel” his medical records. (ECF No. 31.)

23 As stated in the Court’s March 27, 2023, first informational order, “[a]fter defendants’
24 answers are filed, the Court will issue an order opening discovery and setting deadlines for
25 completing discovery, amending the pleadings, and filing dispositive motions. No discovery may
26 be initiated until the Court issues a discovery order or otherwise orders that discovery begin.”
27 (ECF No. 3 at 4.) “Discovery documents inappropriately submitted to the Court may be
28 stricken.” (Id.)

1 Here, a discovery and scheduling order has not yet issued in this case, making Plaintiff's
2 motion to compel responses to his requests premature. Indeed, no Defendant has been ordered
3 served in this case. Accordingly, Plaintiff's second motion to compel filed shall be denied as
4 premature.

II.

ORDER

Based on the foregoing, it is HEREBY ORDERED that:

IT IS SO ORDERED.

Dated: September 8, 2023

Emily A. Bales

UNITED STATES MAGISTRATE JUDGE
